



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Alexander Buryak et al.

Serial No.: 10/565,691

Filed: January 23, 2006

Title OPTICAL DATA CARRIER SYSTEM

Examiner: Unknown

Group Art Unit: Unknown

Docket No: 2085.005US1

**PETITION FOR A THREE-MONTH EXTENSION OF TIME**

Missing Parts box  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

In accordance with the provision of 37 CFR § 1.136(a), it is respectfully requested that a three-month extension of time be granted in which to respond to the Missing Parts mailed July 26, 2006, said period of response being extended from September 26, 2006 to December 26, 2006.

**Our check in the amount of \$510.00 is enclosed to cover the required extension fee.  
Please charge any additional fees or credit overpayment to deposit Account No. 19-0743.**

12/29/2006 ATRAN1 00000125 10565691

02 FC:2253

510.00 OP

Respectfully Submitted

ALEXANDER BURYAK ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A  
P.O. Box 2938  
Minneapolis, MN 55402  
408-278-4042

Date: 12 - 21 - 2006

By:

Bradley A. Forrest

Reg. No: 30,837

**CERTIFICATE UNDER 37 CFR § 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Missing Parts box, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 21<sup>st</sup> day of December 2006.

Name: Nancy Curnoyer

Signature: Nancy Curnoyer



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Alexander Buryak et al.

Title: OPTICAL DATA CARRIER SYSTEM

Docket No.: 2085.005US1

Serial No.: 10/565,691

Filed: January 23, 2006

Due Date: November 26, 2006

Examiner: Unknown

Group Art Unit: Unknown

Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

We are transmitting herewith the attached:

- A return postcard.
- A check in the amount of \$65.00 to cover the small entity surcharge.
- A check in the amount of \$510.00 to cover the Extension of Time Fee.
- Permission to charge account 19-0743 in the amount of \$200 for Required Petition Fee under 37 C.F.R. § 1.17(g)
- Petition for Extension of Time (1 pg.).
- Declaration In Support of Rule 1.47(a) Petition (2 pgs.)
- Petition To File Application By Other Than Inventor (3 pgs.)
- Communication Re: Missing Parts (1 pg.).
- A signed Combined Declaration and Power of Attorney, including supporting evidence ( 16 pgs.).
- Notice to File Missing Parts (2 pgs.).

Applicant claims small entity status under 37 C.F.R. 1.27.

If not provided for in a separate paper filed herewith, please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers and please charge any additional required fees or credit overpayment to Deposit Account No. 19-0743.

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. By: Bradley A. Forrest

Customer Number: 21186

Name: Bradley A. Forrest

Reg. No. 30,837

BAF:CMG:njc

12/29/2006 ATRAN1 00000125 10565691

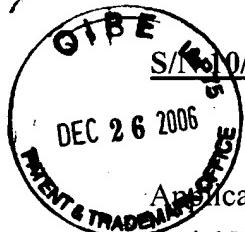
01 FC:2617

65.00 OP

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Attn: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 26 day of December, 2006

Nancy Courneyer  
Name

Nancy Courneyer  
Signature

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Alexander Buryak et al. Examiner: Unknown  
 Serial No.: 10/565,691 Group Art Unit: Unknown  
 Filed: January 23, 2006 Docket: 2085.005US1  
 Title: OPTICAL DATA CARRIER SYSTEM

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**RULE 1.47(a) PETITION TO FILE APPLICATION  
BY OTHER THAN INVENTOR**

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 C.F.R. § 1.47(a) and 35 U.S.C. § 118, Assignee submits this Petition seeking permission to file the above-identified patent application (hereinafter "the application") without the signature of the following inventor who has refused to execute the declaration for the application:

Alexander Buryak  
 53 Coronga Crescent  
 Killara, New South Wales, 2071  
 AUSTRALIA

As set forth in further detail below, Assignee has made a *bona fide* attempt to present the application and corresponding Oath and Declaration to the inventor for signature.

The below-signed attorney, Andre Marais, is a patent attorney employed by the firm of Schwegman, Lundberg, Woessner & Kluth, P.A., which represents Bandwidth Foundry Pty Ltd. in the above-identified application.

This patent application pertains to technology developed by Mr. Alexander Buryak, Mr. Kazimir Kolossovski, and Mr. Dmitrii Yu Stepanov during and in the course and scope of employment by Bandwidth Foundry Pty Ltd. As such, Bandwidth Foundry Pty Ltd. submits that it has a proprietary interest in this application. Mr. Buryak was under a duty to cooperate in the preparation of the application and to assign the application to Bandwidth Foundry Pty Ltd. *See Solomons v. United States*, 137 U.S. 342, 346 (1890) ("If one is employed to devise or perfect an

instrument, or a means for accomplishing a prescribed result, he cannot, after successfully accomplishing the work for which he was employed, plead title thereto as against his employer. That which he has been employed and paid to accomplish becomes, when accomplished, the property of his employer. Whatever rights as an individual he may have had in and to his inventive powers, and that which they are able to accomplish, he has sold in advance to his employer).

Mr. Buryak is no longer employed by Bandwidth Foundry Pty Ltd. On or between August 25, 2005 and September 9, 2005, Assignment documents for the application and an accompanying Combined Declaration and Power of Attorney document were sent by Bandwidth Foundry Pty Ltd. to Mr. Buryak, as indicated by email correspondence between Mr. Buryak and Dr. Ian Mann, the Managing Director of Bandwidth Foundry Pty Ltd., on August 24, 2005, August 25, 2005, September 7, 2005, and September 9, 2005. Assignee has included a copy of these documents and emails. Mr. Buryak indicated receipt of the Assignment documents and the Combined Declaration and Power of Attorney document in a September 9, 2005 email addressed to Dr. Mann. Assignee has included a copy of this email. Mr. Buryak indicated that he would not cooperate with the prosecution of the above-identified application in a May 19, 2006 email, also addressed to Dr. Mann. Assignee has included a redacted copy of this email.

In support of this Petition, Assignee submits the Declaration under Rule 1.63 to fulfill one of the requirements. The Rule 1.63 Declaration has been executed by Dr. Ian Mann, the Managing Director of Bandwidth Foundry Pty Ltd., on behalf of the Assignee. Assignee has provided the requisite certification referred to in 37 C.F.R. §3.73 to allow Dr. Mann to sign the Rule 1.63 Declaration.

Assignee has also included a check for the required petition fee of \$200.00 under 37 C.F.R. § 1.17(g).

The Assignee has been unable to obtain the omitted inventor's signature on a Declaration pursuant to 37 C.F.R. § 1.65 for the above-identified application. Assignee submits that the present Petition is necessary to preserve its rights, to avoid further extension fees and to prevent irreparable harm by the loss of valuable patent rights.

Assignee submits that the foregoing facts establish a *bona fide* attempt to comply with the

Serial Number: 10/565,691  
Filing Date: January 23, 2006  
Title: OPTICAL DATA CARRIER SYSTEM

provisions of Rule 1.47, and, accordingly, request that the Assignee's Petition be granted.

Respectfully submitted,

ALEXANDER BURYAK ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(408) 278-4042

Date 12-21-2006 By Bradley A. Forrest  
Bradley A. Forrest  
Reg. No. 30,837

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, P.O.Box 1450, Alexandria, VA 22313-1450 on this 21st day of December, 2006.

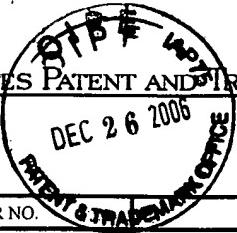
Nancy Courneyer  
Name

Nancy Courneyer  
Signature

POTTS



## UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/565,691	Alexander Buryak	2085.005US1
		INTERNATIONAL APPLICATION NO.
		PCT/AU04/00987
		I.A. FILING DATE
		02/23/2004
		PRIORITY DATE
		07/23/2003
CONFIRMATION NO. 2987		
371 FORMALITIES LETTER		
 *OC000000019746155*		

Date Mailed: 07/26/2006

### NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated / Elected Office (37 CFR 1.495).

- Indication of Small Entity Status
- Copy of the International Application filed on 01/23/2006
- Copy of the International Search Report filed on 01/23/2006
- Preliminary Amendments filed on 01/23/2006
- Information Disclosure Statements filed on 02/17/2006
- Oath or Declaration filed on 01/23/2006
- U.S. Basic National Fees filed on 01/23/2006
- Priority Documents filed on 01/23/2006

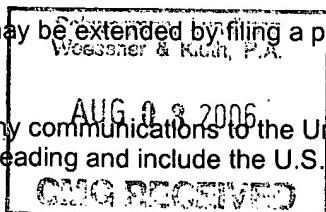
*Resp. due  
3 mo. 09/26/06  
7 mo. 03/26/07 by*

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

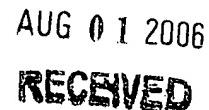
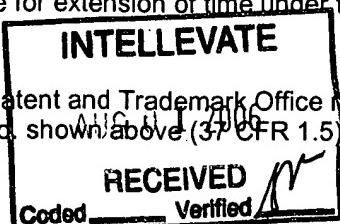
- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. The current oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it:
  - is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68.

**ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTHS FROM THE DATE OF THIS NOTICE OR BY 32 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.**

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).



Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5).



MPTA

A copy of this notice **MUST** be returned with the response.

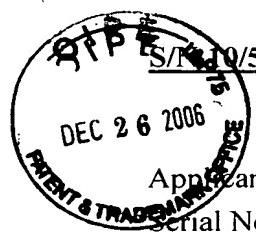
SHAKEEL AHMED

Telephone: (703) 308-9140 EXT 208

PART 1 - ATTORNEY/APPLICANT COPY

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
10/565,691	PCT/AU04/00987	2085.005US1

FORM PCT/DO/EO/905 (371 Formalities Notice)



S/N 10/565,691

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Alexander Buryak et al. Examiner: Unknown  
Serial No.: 10/565,691 Group Art Unit: Unknown  
Filed: January 23, 2006 Docket: 2085.005US1  
Title: OPTICAL DATA CARRIER SYSTEM

**DECLARATION OF DR. IAN MANN**  
**IN SUPPORT OF RULE 1.47(a) PETITION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

I, Dr. Ian Mann declare as follows:

1. I am the Managing Director of Bandwidth Foundry Pty Ltd., putative assignee having a proprietary interest in the above U.S. Patent Application Serial No. 10/565,691.

2. Inventor Alexander Buryak has refused to execute the Combined Declaration and Power of Attorney papers associated with U.S. Patent Application Serial No. 10/565,691, as evidenced by Mr. Buryak's email of May 19, 2006.

3. Bandwidth Foundry Pty Ltd. is a real party in interest because the subject matter of the above patent application was developed during and in the course of Mr. Buryak's employment with Bandwidth Foundry Pty Ltd.

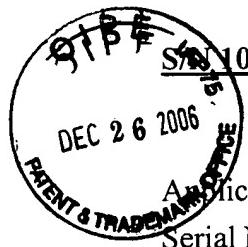
4. The rights of Bandwidth Foundry Pty Ltd. will be irreparably damaged if this Petition under 37 C.F.R. 1.47(a) is not granted as U.S. Patent Application Serial No. 10/565,691 will become abandoned as of the expiration period set forth in the U.S. Patent & Trademark Office correspondence dated July 26, 2006.

5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any United States patent issued thereon.

Serial Number: 10/565,691  
Filing Date: January 23, 2006  
Title: OPTICAL DATA CARRIER SYSTEM

Date: 24/9/2006

  
Dr. Ian Mann



SAR 10/565,691

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Alexander Buryak et al.

Examiner: Unknown

Serial No.: 10/565,691

Group Art Unit: Unknown

Filed: January 23, 2006

Docket: 2085.005US1

Customer No.: 21186

Confirmation No.: 2987

Title: OPTICAL DATA CARRIER SYSTEM

**COMMUNICATION RE: MISSING PARTS**

Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

In response to the "Notice to File Missing Parts" (see enclosed copy), we submit the Combined Declaration and Power of Attorney, a check in the amount of \$65.00 to cover the Small entity surcharge, .

Applicants assume the application is now in proper order and in condition for examination. Please direct any inquiries to the undersigned attorney at 408-278-4042.

If necessary, please charge any additional fees or credit overpayment to Deposit Account 19-0743.

Respectfully submitted,

Alexander Buryak et al.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
408-278-4042

Date 12-21-2006

By

Bradley A. Forrest  
Reg. No. 30,837  
BAF:CMG:njc

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Attn: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 21 day of December, 2006

Nancy Canfield  
Name

Nancy Canfield  
Signature

Attorney Docket No.: 2085.005US1  
 Serial No. 10/565,691  
 Filing Date: January 23, 2006

Page 1 of 5



Attorney Docket No.2085.005US1

SCHWEGMAN ■ LUNDBERG ■ WOESSNER ■ KLUTH

## United States Patent Application

### COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: **OPTICAL DATA CARRIER SYSTEM**,

the specification of which was filed on January 23, 2006 as application serial no. 10/565,691 and was amended on January 23, 2006.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). I also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or PCT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. § 1.63(e).

I hereby claim foreign priority benefits under 35 U.S.C. §119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

Foreign application(s), if any, claiming priority under 35 U.S.C. § 119:

<u>Application Number</u>	<u>Country</u>	<u>Day/Month/Year Filed</u>
AU2003903802	Australia	23/07/2003

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 120 or 365(c) of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. § 1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

<u>Application Number</u>	<u>Filing Date</u>	<u>Status</u>
PCT/AU2004/000987	July 23, 2004	Pending

Attorney Docket No.: 2085.005US1  
Serial No. 10/565,691  
Filing Date: January 23, 2006

Page 2 of 5

I hereby appoint the attorneys associated with the customer number listed below to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

**Customer Number: 21186**

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary. Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:

P.O. Box 2938, Minneapolis, MN 55402  
Telephone No. (612)373-6900

---

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1 : Dr. Alexander Buryak

Citizenship: Australia Residence: Killara, 2071 Australia

Post Office Address: 53 Corong Crescent  
Killara, 2071 New South Wales  
Australia

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Alexander Buryak

Attorney Docket No.: 2085.005US1  
Serial No. 10/565,691  
Filing Date: January 23, 2006

Page 3 of 5

Full Name of joint inventor number 2 : Dr. Kazimir Kolossovski

Citizenship: Australia Residence: Australian Capital Territory, Australia  
Post Office Address: 24 Renny Place  
Belconnen  
Australian Capital Territory 2617  
Australia

Signature: Kazimir Kolossovski 19/04/2006  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney Docket No.: 2085.005US1  
Serial No. 10/565,691  
Filing Date: January 23, 2006

Page 4 of 5

Full Name of joint inventor number 3 : Dmitrii Yu Stepanov

Citizenship: Russian Federation

Residence: New South Wales Australia

Post Office Address:  
7/126 Croydon Avenue  
Croydon Park  
New South Wales 2133  
Australia

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Dmitrii Yu Stepanov

Attorney Docket No.: 2085.005US1  
Serial No. 10/565,691  
Filing Date: January 23, 2006

Page 5 of 5

**§ 1.56 Duty to disclose information material to patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

Attorney Docket No.: 2085.005US1  
 Serial No. 10/565,691  
 Filing Date: January 23, 2006

Page 1 of 5



Attorney Docket No. 2085.005US1

SCHWEGMAN ■ LUNDBERG ■ WOESSNER ■ KLUTH

## United States Patent Application

### COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: **OPTICAL DATA CARRIER SYSTEM,**

the specification of which was filed on January 23, 2006 as application serial no. 10/565,691 and was amended on January 23, 2006.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). I also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or PCT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. § 1.63(e).

I hereby claim foreign priority benefits under 35 U.S.C. § 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

Foreign application(s), if any, claiming priority under 35 U.S.C. § 119:

<u>Application Number</u>	<u>Country</u>	<u>Day/Month/Year Filed</u>
AU2003903802	Australia	23/07/2003

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

**No such claim for priority is being made at this time.**

I hereby claim the benefit under 35 U.S.C. § 120 or 365(c) of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. § 1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

<u>Application Number</u>	<u>Filing Date</u>	<u>Status</u>
PCT/AU2004/000987	July 23, 2004	Pending

Attorney Docket No.: 2085.00SUS1  
Serial No. 10/565,691  
Filing Date: January 23, 2006

Page 2 of 5

I hereby appoint the attorneys associated with the customer number listed below to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

**Customer Number: 21186**

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary. Please direct all correspondence in this case to **Schwegman, Lundberg, Woessner & Kluth, P.A.** at the address indicated below:

P.O. Box 2938, Minneapolis, MN 55402  
Telephone No. (612)373-6900

---

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1 : Dr. Alexander Buryak  
Citizenship: Australia Residence: Killara, 2071 Australia  
Post Office Address: 53 Corong Crescent  
Killara, 2071 New South Wales  
Australia  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Alexander Buryak

---

Attorney Docket No.: 2085.005US1  
Serial No. 10/565,691  
Filing Date: January 23, 2006

Page 3 of 5

Full Name of joint inventor number 2 : **Kazimir Kolossovski**  
Citizenship: **Russian Federation** Residence: **Australian Capital Territory Australia**  
Post Office Address: **72 Lachlan Street**  
**Macquarie**  
**Australian Capital Territory 2614**  
**Australia**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
Kazimir Kolossovski

Attorney Docket No.: 2085.005US1  
Serial No. 10/565,691  
Filing Date: January 23, 2006

Page 4 of 5

Full Name of joint inventor number 3 : Dmitrii Yu Stepanov

Citizenship: Russian Federation  
Post Office Address: 7/126 Croydon Avenue  
Croydon Park  
New South Wales 2133  
Australia

Residence: New South Wales Australia

Signature:

Date: 12.04.06  
Dmitrii Yu Stepanov

Attorney Docket No.: 2085.005US1  
Serial No. 10/565,691  
Filing Date: January 23, 2006

Page 5 of 5

**§ 1.56 Duty to disclose information material to patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
- (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.



"Alex Buryak"  
<a.buryak@futuretech.net.a  
u>

To | Mann@bwfoundry.com

60

bcc

19/05/2006 04:55 PM

Subject IP documents to sign

"Alex Buryak"  
[<a.buryak@futuretech.net.au>](mailto:a.buryak@futuretech.net.au)

### **History:**

 This message has been forwarded.

Dear Ian,

Thank you very much for your letter regarding patent application Optical Data Career System.

Over last weekend I carefully reviewed these documents and unfortunately came to the conclusion that I cannot sign COMBINED DECLARATION AND POWER OF ATTORNEY form at this stage. I am really sorry for that, but I am worried that Optical Data Career System patent application violates IP rights of ROC

Yours truly,

Alexander Buryak.



"Alexander Buryak"  
<a.buryak@futuretech.net.a  
u>

09/09/2005 10:49 AM

Please respond to  
"Alexander Buryak"  
<a.buryak@futuretech.net.au>

To i.mann@bwfoundry.com

cc

bcc

Subject patent docs

History:

This message has been replied to.

Hi Ian,

Sorry for the delay with the answer. Busy, busy, busy...  
To cut it short:

- (i) Yes, I've received the documents in question
- (ii) Before I sign anything I would like to talk to you  
in person (as B2B).

Unfortunately I am very busy at the moment, so later next week I'll  
suggest the time of our meeting. Does it sound ok?

Yours Truely,

Sasha.

>In brief summary, UNSW and BF have come to an  
>agreement to jointly own  
>the IP.  
>  
>If you are happy to proceed I will mail you two  
>hardcopies for your review  
>and signature of which both need to be returned to  
>Bandwidth Foundry.  
>  
>Kind regards  
>  
>Ian  
>  
>  
>\_\_\_\_\_  
>Ian Mann, PhD  
>Managing Director  
>BANDWIDTH FOUNDRY PTY LIMITED  
>\_\_\_\_\_  
>Suite 102 National Innovation Centre  
>Australian Technology Park, Eveleigh, NSW 1430  
>+61 2 8374 5305 Phone  
>+61 2 8374 5301 Fax  
>+61 (0)418 252 063 Mobile  
>[i.mann@bwfoundry.com](mailto:i.mann@bwfoundry.com)  
>[www.bwfoundry.com](http://www.bwfoundry.com)



Ian  
Mann/Australian\_Photonics  
Sent by: Ian Mann  
  
07/09/2005 05:15 PM

To "Alexander Buryak" <a.buryak@futuretech.net.au>  
cc  
bcc  
Subject RE: Optical Data Storage IP Assignment

Hi Alex,

I wanted to make sure that you received the express post of IP assignment Deeds and to indicate when we can expect them back. Once I receive them from you I will arrange to have UNSW get Kazimir to sign.

Regards

Ian

---

Ian Mann, PhD  
Managing Director  
BANDWIDTH FOUNDRY PTY LIMITED

---

Suite 102 National Innovation Centre  
Australian Technology Park, Eveleigh, NSW 1430  
+61 2 8374 5305 Phone  
+61 2 8374 5301 Fax  
+61 (0)418 252 063 Mobile  
[i.mann@bwfoundry.com](mailto:i.mann@bwfoundry.com)  
[www.bwfoundry.com](http://www.bwfoundry.com)

-----"Alexander Buryak" <a.buryak@futuretech.net.au> wrote: -----

To: I.Mann@bwfoundry.com  
From: "Alexander Buryak" <a.buryak@futuretech.net.au>  
Date: 08/25/2005 10:06PM  
Subject: RE: Optical Data Storage IP Assignment

Dear Ian,

Please, go ahead and send me two copies.

Cheers,

Sasha.

>----- Original Message -----  
>From: I.Mann@bwfoundry.com  
>To: a.buryak@futuretech.net.au  
>Sent: Wed, 24 Aug 2005 16:34:17  
>  
>Hi Alex,  
>  
>I am writing to seek your agreement to execute an  
>assignment deed for the  
>IP that was jointly created by you, Kazimir, and  
>Dima while you were with  
>Bandwidth Foundry.  
>The assignment deed has been drafted and approved  
>by UNSW and Bandwidth  
>Foundry and now requires the signatures of the  
>inventors.  
>



"Alexander Buryak"  
<a.buryak@futuretech.net.au>

To I.Mann@bwfoundry.com

cc

bcc

25/08/2005 10:06 PM

Please respond to  
"Alexander Buryak"  
<a.buryak@futuretech.net.au>

Subject RE: Optical Data Storage IP Assignment

History:

This message has been replied to.

Dear Ian,

Please, go ahead and send me two copies.

Cheers,

Sasha.

>----- Original Message -----  
>From: I.Mann@bwfoundry.com  
>To: a.buryak@futuretech.net.au  
>Sent: Wed, 24 Aug 2005 16:34:17  
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>In brief summary, UNSW and BF have come to an  
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>the IP.  
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>If you are happy to proceed I will mail you two  
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>Bandwidth Foundry.  
>  
>Kind regards  
>  
>Ian  
>  
>  
>  
>  
>\_\_\_\_\_  
>Ian Mann, PhD  
>Managing Director  
>BANDWIDTH FOUNDRY PTY LIMITED  
>  
>\_\_\_\_\_  
>Suite 102 National Innovation Centre  
>Australian Technology Park, Eveleigh, NSW 1430  
>+61 2 8374 5305 Phone  
>+61 2 8374 5301 Fax  
>+61 (0)418 252 063 Mobile  
>i.mann@bwfoundry.com  
>www.bwfoundry.com

Ian  
Mann/Australian\_Photonics  
24/08/2005 04:34 PM

To a.buryak@futuretech.net.au  
cc  
bcc  
Subject Optical Data Storage IP Assignment

Hi Alex,

I am writing to seek your agreement to execute an assignment deed for the IP that was jointly created by you, Kazimir, and Dima while you were with Bandwidth Foundry.  
The assignment deed has been drafted and approved by UNSW and Bandwidth Foundry and now requires the signatures of the inventors.

In brief summary, UNSW and BF have come to an agreement to jointly own the IP.

If you are happy to proceed I will mail you two hardcopies for your review and signature of which both need to be returned to Bandwidth Foundry.

Kind regards

Ian

---

Ian Mann, PhD  
Managing Director  
BANDWIDTH FOUNDRY PTY LIMITED

---

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i.mann@bwfoundry.com  
www.bwfoundry.com

\$ 05.150  
12/22/2006  
Mailed From 55402  
US POSTAGE



SCHWEGMAN ■ LUNDBERG ■ WOESSNER ■ KLUTH

P.O. Box 2938  
1600 TCF Tower  
121 South Eighth Street  
Minneapolis, Minnesota 55402

FIRST CLASS MAIL DKT # 341.032US2

TO: Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

